Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term, 1995

Robert J. Laffond
Petitioner,

vs.

Commonwealth of Massachusetts
Respondent.

Petition for Writ of Certiorari to the
Supreme Judicial Court of Massachusetts

Petition for Writ of Certiorari

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39 pp

QUESTIONS PRESENTED FOR REVIEW

I. Can a Defendant be charged with failure to have a refuse removal permit and then be convicted solely on an Agreed Statement of Facts that is unrelated to the charge and that does not prove any essential elements of the prosecution's case?

II. Can a Town limit highway access to a refuse truck, engaged in interstate commerce, by limiting the hours the truck may pass, empty or full, through residential streets which are the only route between the central truck terminal and the highways?

III. Can a Town restrict the range of operation and thereby limit the out of state customers an interstate trucking business may serve through a health regulation enacted to control the hours of refuse collection in residential neighborhoods?

IV. Can a Town restrict the hours of operation of empty trucks, engaged in interstate trucking, with a health regulation enacted to control the hours of refuse collection in residential neighborhoods?

V. Can a Town enact and enforce a health regulation against empty garbage trucks when such a regulation exceeds the enabling legislation enacted by the Massachusetts Legislature?

VI. Does the Dalton, Massachusetts Health Regulation, "Transportation of Garbage on Public Ways" violate the Commerce Clause of Art.1, §8 of the United States Constitution?

LIST OF ALL PARTIES TO THE PROCEEDING

1. Commonwealth of Massachusetts

OPINIONS DELIVERED IN THE CASE

2. Robert J. Laffond

3. No Corporation is involved.

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In The
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OPINION BELOW

The only opinion delivered in this case was produced by the Appeals Court for the Commonwealth of Massachusetts on September 29, 1995 as

Case No. 94-P-1961. A petition for rehearing was filed by Robert J. Laffond and denied on October 26, 1995.

JURISDICTION OF THIS COURT

An Application for Further Appellate Review was filed in the Supreme Judicial Court of Massachusetts and was denied on November 27, 1995, without an opinion.

Jurisdiction is based upon 28 USC §1257 which provides for Supreme Court review of final judgments of the highest court of a State by Writ of Certiorari where the validity of a State statute is drawn into question as being repugnant to the Constitution or where Constitutional immunity or protection is claimed.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

The Commerce Clause at Art. 1, §8 of the United States Constitution provides that "Congress shall have power to regulate commerce with foreign nations, and among the several states."

The power of the Town to enact the Regulation is derived from the Massachusetts Home Rule Amendment (Const. Amend. Art. 2, §6) which is set forth below:

> Section 6. *Governmental Powers of Cities and Towns.* - Any city or town may, by the adoption, or repeal or local ordinances or by-laws, exercise any power or function which the general court has power

to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

The Massachusetts enabling legislation that allows Dalton to enact the subject Health Regulation is contained in M. G. L. c.111, §31B which is limited by M. G. L. c.111, §31A, the applicable portions which are set forth below:

> §31A Permit for removal or transportation of garbage; application; exemptions - ... provided, however, that no rules or regulations shall restrict the hours of the day when garbage, offal or other offensive substances may be collected in areas zoned for business, commercial or industrial use.

M.G.L. c.111, @ 31B provides:

> Boards of health shall, from time to time, make rules and regulations for the control of the removal, transportation or disposal of garbage, offal or other offensive substances. Whoever violates any provision of section thirty-one A, or any rule or regulation made thereunder, shall be punished by a fine of not more than one thousand dollars.

This case concerns the Board of Health Regulation entitled *Transportation of Garbage on Public Ways*. The regulation, provides, [As quoted from the Town Notice Signed/Adopted: July 12, 1993 and Published 7/16/93]:

In order to limit noise and odor and provide peace of mind within the residential zoning districts of the Town of Dalton, the Board of Health, pursuant to M. G. L. c.111, §31B, hereby adopts the following regulation:

> Effective August 1, 1993, no removal, transportation or disposal of garbage, refuse, recyclable materials, offal or other offensive substances **or empty refuse vehicles**, shall be permitted in any residential district between the hours of 7:00 p.m. and 7:00 a.m., Monday through Sunday. Violation of this regulation will result in a fine of $1,000. Each offense will be deemed a separate violation. If any portion, sentence or clause is subsequently held to be invalid, the remainder of the regulation shall be in full force and effect. (emphasis added)

/s/ Board of Health, Vivian I. Mason, John W. Bartels, Sr., and Paul C. Carter.

USC Constitution Amendment 5 of the United States Constitution provides that "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

USC Constitution Amendment 14 of the United States Constitution provides that "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A Summons and Complaint was filed against Robert J. Laffond on October 28, 1993 under the heading of "PERMIT FOR REMOVAL OR TRANS. OF GARBAGE C111 §31A" and charging that he, "did remove or transport garbage, offal or other offensive substances through the street of any city or town, to wit: Dalton, without first obtaining a permit from the board of health of said city or town in violation of G.L.C. 111,s.31A."

BACKGROUND

Berkshire Clean-Way and Rubbish Removal, Inc. (BCI) is Mr. Laffond's employer and has been operating a recycling and trash hauling business at it's current location since the 1970s. The BCI facility consists of an office, garage and recycling facilities located at 10 Park Avenue in the Town of Dalton. BCI's business activities have been made possible by zoning variances previously granted by Dalton. BCI's facility is clustered together with the now closed Town Landfill, the Dalton Town Garage and Transfer Facility and the Petricca Gravel mining operation, all of which use large trucks and heavy equipment. The Dalton Town Garage and Transfer Facility are on Town land while the Town Landfill, BCI operations and the Petricca Gravel pit are on land owned by the Warren family.

BCI Equipment, Dalton Town Trucks and Petricca Vehicles must all travel through an adjacent residential district to enter or leave their places of business. Neighbors have complained about the commercial traffic that must travel through their residential neighborhood.

BCI currently operates the Dalton Town Transfer Station adjacent to the Town Garage which is located very close to BCI's facility. Usually the refuse carried on the truck driven by Mr. Laffond is Dalton Rubbish on its way to

a Recycling Facility or to be disposed of at an incinerator or landfill.

BCI trucks must start very early in the morning to pick up waste and transport the waste to incinerators and land fill locations that are a great distance from Dalton and that close in the early afternoon. BCI trucks must also start very early to get recyclable materials to markets at the times deliveries are allowed by the markets.

From time to time BCI receives emergency calls to remove ash from municipal incinerators that operate on a 24 hour basis. Failure to remove the ash would choke the incineration operation and require a shutdown with severe consequences.

The typical refuse material is inflammable with about half the energy content of the same weight of coal. BCI often receives emergency calls in the night time from municipal fire departments to remove burning containers of refuse to an incinerator to be safely disposed of. This is the usual method of dealing with fires in large containers and large compactors.

Current Town officials have opposed BCI doing business at it's current location, despite variances previously granted, and have refused to sign the Commonwealth's Environmental sight designation certificate necessary for BCI to get the Environmental approvals to operate. The enactment and enforcement of the Health Regulation now before this court appears to be another tool to drive BCI operations out of Dalton.

There were guilty findings when this case was submitted to the Central Berkshire District Court and then on appeal to the Jury Session of that court with Jury waived, based upon the following Agreed Statement of Facts:

1. This matter concerns a Board of Health Regulation

entitled *Transportation of Garbage on Public Ways* (hereinafter referred to as "the Regulation"). The regulation provides:

> Effective August 1, 1993, no removal, transportation or disposal of garbage, refuse, recyclable materials, vehicles, shall be permitted in any residential district between the hours of 7:00 p.m. and 7:00 a.m., Monday through Sunday. Violation of this regulation will result in a fine of $1,00~. Each offense will be deemed a separate violation. If any portion, sentence or clause is subsequently held to be invalid, the remainder of the regulation shall be in full force and effect./s/ Board of Health, Vivian I. Mason, John W. Bartels, Sr., and Paul C. Carter.

The regulation was adopted pursuant to the provisions of M.G.L. c.111, §31B "in order to limit noise and odor and provide peace of mind within the residential zoning district of the Town of Dalton."

The regulation became effective on July 16, 1993 in accordance with the provisions of MGL c. 111, §31.

2. On August 4, 1993, Dalton Police Officer Rene J. Bonneau observed a truck with the name Berkshire Cleanway on the side travelling on a residential street, specifically Park Avenue, in Dalton, at 5:19 a.m. in the morning. A picture of the truck is attached as Exhibit A.

3. Officer Bonneau observed that the truck cab was brown, and the attached trailer contained two bins, one painted green and the other brown.

4. Officer Bonneau stopped the vehicle and informed the driver that he was in violation of the Regulation.

5. The driver identified himself to Officer Bonneau as Robert J. Laffond.

6. Robert J. Laffond presented Officer Bonneau with a commercial registration for the truck and for its trailer that

indicated that Berkshire Cleanway Rubbish Removal, Inc. (BCI) was the owner of the vehicle. Mr. Laffond stated to Officer Bonneau that BCI was the owner of the vehicle. Officer Bonneau recorded Mr. Laffond's driver's license number and the two registration numbers for the commercial cab and trailer.

7. BCI engaged in the interstate trucking of waste and recyclable materials. BCI has a single place of business; consisting of an office, garage and recycling facilities located at 10 Park Avenue (also known as Bridle Path Road) in the Town of Dalton, Berkshire County, Commonwealth of Massachusetts with a zip code of 01226. In addition, BCI has parked up to two trucks, without containers, at Freadman Steel, in Pittsfield, Massachusetts.

8. On September 22, 1993, Officer Bonneau stopped Mr. Laffond at 5:36 a.m. on Park Avenue Extension, in Dalton, while driving the same vehicle shown in Exhibit A. The truck contained construction and demolition debris. The parties agree that the Dalton police report dated 9/23/93 pm case 93-09-1282 be attached. Any facts in the police report that are inconsistent with the facts herein are not accepted. Allegations in para. 3 and 4 of the police report regarding BCI intentions to violate the Regulation are not agreed to by Mr. Laffond.

9. The location of BCI is shown on the Regional Locus Map, drawn by Hill Engineers, Architects, Planners and attached as Exhibit B. The only approach to or exit from the BCI place of business is over High Street or Park Avenue Extension, both of which are residential streets in the Town of Dalton.

10. The truck driven by Mr. Laffond at the time he was stopped by Officer Bonneau had been parked the evening before at the BCI place of business at 10 Park Avenue Extension in the Town of Dalton. Mr. Laffond was

leaving the BCI garage at the time he was stopped by Officer Bonneau.

11. Officer Bonneau prepared a report of the incident and forwarded the report to the Chief of Police. Sergeant Lawrence Higgins, Acting Chief of Police, forwarded the incident report of the violation of the Regulation to the Town of Dalton Board of Health.

12. On September 24, 1993, Police Chief Daniel Filiault, at the direction of the Town of Dalton Board of Health, filed an application for a Complaint to issue against Mr. Laffond for violation of the Regulation.

13. On October 28, 1993, a hearing was held in the Pittsfield District Court on the Town of Dalton's application for a Complaint. The driver, by and through his attorney, moved to dismiss the matter.

14. On March 17, 1994, at a pre-trial conference, the Court (Barbalunga, J.) allowed defendant to resubmit his Motion to Dismiss and set a hearing on that Motion to Dismiss for May 6, 1994 at 9:00 a.m. at the Pittsfield District Court. The parties agreed at the pre-trial conference that the matter probably could be submitted on an Agreed Statement of Facts. On May 6, 1994, the Court ordered the parties to file any memoranda by May 27, 1994 and scheduled the matter for disposition on June 2, 1994.

/s/ Leslie R. Long, Esq.

Dated: May 26, 1994 /s/ Joel B. Bard, Esq.

The case was appealed to the Appeals Court of Massachusetts where judgment was affirmed on September 29, 1995 and rehearing was denied on October 26, 1995. A Petition for Further Appellate Review was filed with the Supreme Judicial Court of Massachusetts and was denied November 27, 1995 without an opinion.

POINT THAT FEDERAL QUESTIONS WERE RAISED

Arguments raised in Robert Laffond's Motion to Dismiss at the District Court and Jury Session level:

The right of a citizen to travel upon the public highways and to transport his property thereon ... is not a mere privilege which the municipality may permit or prohibit at will, but a common right which the citizen has under his right of life, liberty, and the pursuit of happiness. (7A Am Jur 2d §7) It is well settled that the use of highways and streets by vehicular or pedestrian traffic may be limited, controlled, and regulated by the responsible public authority in the exercise of the police power whenever, and to the extent necessary to provide for and promote the safety, peace, health, morals, and general welfare of the people.... However, the power to regulate vehicles and their use on the public ways may not be used indirectly to control and regulate the business of the user. (7A Am Jur 2d §11) State regulations of motor vehicles engaged in transportation for hire which unreasonably interfere with or discriminate against interstate commerce are invalid. *Buck vs. Kuykendall*, 267 U.S. 307, 45 S. Ct. 324 When a state goes beyond the regulation of the manner of use of highways, and purports to determine the persons by whom an interstate highway may be used, its regulation may be attacked successfully on the ground of an imposition of a burden on interstate commerce. *George W. Bush & Sons Co. vs. Maloy*, 267 U.S. 317, 45 S.Ct. 324 By the act of Congress in adopting the Motor Carrier Act the power of the state over interstate motor carriers was greatly reduced. *Castle vs. Hayes Freight Lines, Inc.*, 348 U.S. 61, 75 S. Ct. 191.

A town ordinance that prohibited trucks in excess of a specified weight from using a certain portion of a street (in a residential district) that was the shortest route between a major industrial area and an expressway, and which had the effect of increasing the driving distance between the industrial area and the expressway by 3.3 miles my mandating the use of an alternate route, would be declared unconstitutional as unreasonably encroaching on the exercise of private property rights without any substantial relation to a legitimate governmental purpose ... *Peconic Avenue Businessmen's Association vs. Brookhaven* 469 NYS2d 483.

Massachusetts has deregulated the waste transport business so ordinary dump trucks and construction vehicles can cart construction debris, commercial waste and items prohibited by the Dalton Regulation. Waste transport is not limited to a special purpose, easily recognizable vehicle. The Regulation is unreasonably discriminatory in that only vehicles operated by BCI or some other organization known to be in the Waste Transport business are effectively prohibited from operating at night or in the early morning. The Dalton Regulation is unreasonable in its effect because it prevents BCI from operating 12 hours per day when its competition, that need not travel through a Dalton residential area, may operate. BCI traffic is only a small portion of the large truck traffic traveling down Park Avenue in Dalton. The majority of the large Park Avenue truck traffic consists of Dalton Town vehicles and Patricia Construction vehicles.

Municipal ordinances may not exceed the power conferred by enabling statutes *City of Boston v. A. W. Perry, Inc.* (1939) 22 N.E.2d 627, 304 Mass. 18; *Cawley v. Northern Waste Co.* (1921) 132 N.E. 365, 239 Mass. 540. M.G.L 111 §31A and 31B are the enabling statutes for transportation of garbage. Clearly, the Regulation exceeds the powers granted in the enabling statutes. There is

certainly no power conferred upon Dalton to regulate empty garbage trucks. This action against Robert J. Laffond should be dismissed.

Issues raised in the brief submitted to the Appeals Court of Massachusetts:

The right of a citizen to travel upon the public highways and to transport his property thereon ... is not a mere privilege which the municipality may permit or prohibit at will, but a common right which the citizen has under his right of life, liberty, and the pursuit of happiness. (7A Am Jur 2d §7) It is well settled that the use of highways and streets by vehicular or pedestrian traffic may be limited, controlled, and regulated by the responsible public authority in the exercise of the police power whenever, and to the extent necessary to provide for and promote the safety, peace, health, morals, and general welfare of the people.... However, the power to regulate vehicles and their use on the public ways may not be used indirectly to control and regulate the business of the user. (7A Am Jur 2d §11)

1. The Town of Dalton does not have the authority to enact the Regulation?

The power of the Town to enact the Regulation is derived from the Home Rule Amendment (Const. Amend. Art. 2, §6) which points to enabling legislation. The enabling legislation is contained in M. G. L. c.111, §31B (supra) which is limited by M. G. L. c.111, §31A and restricts the Town's power to regulate empty trucks.

The intended effect and consequence of the Regulation is to restrict the hours of the day when garbage may be collected in areas zoned for business, commercial or industrial use contrary to the limitation on Town powers set forth in M. G. L. c.111, §31A.

The enabling legislation is concerned with garbage not the regulation of truck traffic within a Town. The Regulation goes beyond the authority of the enabling legislation by restricting **empty refuse vehicles** from being in any residential district between the hours of 7:00 p.m. and 7:00 a.m. on any day.

The meaning of the term "refuse vehicle" is very vague. Since the Commonwealth deregulated waste vehicles, any vehicle with a commercial license can haul refuse, though not every vehicle does. Even Town vehicles haul branches and waste from public works projects which cargo could fall within the general term of refuse. Does this forever classify these vehicles as "empty refuse vehicles" forever subject to the Regulation. Every pick-up truck or other truck that transports material to the Town Transfer Station would thereafter qualify as a refuse vehicle subject to the Regulation. The point is that there is no design characteristic or permit that would identify a particular vehicle as being an "empty refuse vehicle" subject to the Regulation. The result is the Regulation is only enforced against those such as BCI which is in the business of transporting refuse. This is discriminatory because similar vehicles with similar noise characteristics travel through Dalton Residential Districts and are not prohibited by the Regulation. This is because such vehicles are not generally regarded as "empty refuse vehicles" even though they have that capacity and may be used to transport rubbish.

2. The Regulation violates the Commerce Clause of Art. 1, §8 of the United States Constitution.

The Commerce Clause provides that "Congress shall have power to regulate commerce with foreign nations, and among the several states." In the case of the *City of Philadelphia v. New Jersey, et al* 437 U.S. 617 (1978) at page 622, the Supreme Court held that "All objects of

interstate commerce merit Commerce Clause protection ... we reject the state court's suggestion that the banning of "valueless" out-of-state wastes ... implicates no constitutional protection". This case overturned a New Jersey statute prohibiting importation of waste collected outside New Jersey. Therefore the garbage, refuse, recyclable materials, offal or other offensive substances carted by BCI deserves and is entitled to Commerce Clause protection.

What standard should be used in evaluating whether the Regulation violates the Commerce Clause? At one extreme, the case of *City of Philadelphia v. New Jersey, et al* (supra) pointed out at page 624 "where simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected". In a case of this type, the Supreme Court recently overturned a Massachusetts effort to protect the Commonwealth's troubled dairy industry. The Supreme Court observed that "Our Commerce Clause jurisprudence is not so rigid as to be controlled by the form by which a State erects barriers to commerce. Rather our cases have eschewed formalism for a sensitive, case-by-case analysis of purposes and effects... In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce". *West Lynn Creamery et al v. Jonathatn Healy, Commissioner of the Department of Food and Agriculture* 114 S. Ct. 2205, 129 L Ed 2d 157 (June 1994) at page 172 of the Lawyers Edition.

The general contours of the standard to be applied on the case-by-case analysis of the purposes and effects the Regulation are referred to as the Pike Test that was first outlined by the Supreme Court in *Pike v. Bruce Church, Inc.* 397 U.S. 127 at Page 142 which is quoted below:

> Where the statute regulates even handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits... If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Regulation effectively limits the hours that BCI may operates and restricts BCI's ability to leave Dalton, travel out of state and collect refuse and recyclable materials for transportation to Massachusetts based recyclable material markets, incinerators and landfill locations.

The case of *Diamond Waste, Inc. v. Monroe County, GA.* 939 F.2d 941 (11th Circuit 1991) held that County's resolution governing transportation of refuse, which prohibited landfill operator from transporting waste from outside county and state, violated commerce clause, in that impact on interstate commerce could have been substantial and county could have achieved its objectives in a less burdensome manner" The 11th Circuit Court of Appeals observed in this case at page 946 "under the particular circumstances at issue, the fact that less restrictive alternatives are available to Monroe County makes the burden imposed by the absolute ban clearly excessive in relation to the local benefits created."

Refuse trucks traveling quickly through a neighborhood exude little odor other than the odor of Diesel Engine exhaust that is common to all trucks and similar

heavy equipment. The problem appears to be noise. The Town of Dalton could have established reasonable truck noise levels that would be applicable to all trucks not just to so called "refuse vehicles". Because an available less restrictive alternatives is not used by the Regulation, then the absolute ban on travel in a residential district between the hours of 7:00 p.m. and 7:00 a.m. on any day violates the Commerce Clause of the Constitution.

Issues raised in the request for rehearing submitted to the Appeals Court of Massachusetts:

Can the Town of Dalton shut down BCI's inter-state trucking business between 7:00 p.m. and 7:00 a.m. by enforcing a Health Regulation that restricts both refuse hauling trucks and empty trucks? The enabling statute, M. G. L. c.111, §31A, that gives Dalton the power to enact the Health Regulation has several serious limitations. It does not permit Towns to regulate motor carriers in the Commonwealth. It focuses on the regulation of garbage hauling and not on the regulation of the truck that does the hauling. It also prohibits Town enactment of any regulation that would "restrict the hours ... when garbage ... may be collected in areas zoned for business, commercial or industrial use". The Dalton Regulation prohibits BCI from conducting commercial or industrial garbage pick up after 7:00 p.m. or before 7:00 a.m. since BCI is locked behind a residential neighborhood with no direct highway access.

The Complaint charges the Defendant with transporting garbage through the Streets of Dalton without first obtaining a permit from the Board of Health in violation of G.L.C.111, §31A. There is nothing in the Agreed Statement of Facts that would support a conviction of the Defendant on the Charge set forth in the Complaint arising

out of the alleged September 22, 1993 offense. In fact, BCI (and the Defendant) have the required §31A permit (See attached copy). The Complaint, filed by the Prosecution in this case, has nothing to do with the Dalton Health Regulation and should clearly be dismissed for lack of evidence.

The Agreed Statement of Facts and the argument of both parties centers around the Dalton Health Regulation and the alleged offense of August 4, 1993. The original draft of the Agreed Statement of Facts did not contain the September 22, 1995 incident. (A copy is attached for your information) This incident was added later at the request of Dalton Town Counsel. Clearly, the wrong Complaint was filed in the Pittsfield District Court or the Prosecution failed to file the second Complaint involving the August 4, 1993 incident.

Issues raised in the Petition for Further Appellate Review to the Supreme Judicial Court of Massachusetts:

(1.) Does the Town of Dalton have the authority to enact the Regulation, restricting hours of Commercial refuse pickup and restricting hours of operation of empty and full refuse vehicles?

(2.) The Regulation violates the Commerce Clause of Art. 1, §8 of the United States Constitution. (Control of operational hours limits operational range and impacts interstate commerce and less restrictive means are available)

(3.) The wrong Complaint was filed in the Pittsfield District Court which is not supported by the evidence in this case.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

Rule 10.1(c) which states, "When a state court ... has

decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

A fundamental due process requirement is that a defendant be given notice in a Complaint of the charges against him so he can prepare a defense. The Complaint in this case charges the Defendant with transporting garbage through the Streets of Dalton without first obtaining a permit from the Board of Health in violation of G.L.C.111, §31A. Nothing in the Agreed Statement of Facts support a conviction of the Defendant.

Dalton has shut down BCI's inter-state trucking business between 7:00 p.m. and 7:00 a.m. by enforcing a Health Regulation that restricts both refuse hauling trucks and empty trucks. The enabling statute, M. G. L. c.111, §31A, that gives Dalton the power to enact the Health Regulation has several serious limitations. It does not permit Towns to regulate motor carriers in the Commonwealth. It focuses on the regulation of garbage hauling and not on the regulation of the truck that does the hauling. It also prohibits Town enactment of any regulation that would "restrict the hours ... when garbage ... may be collected in areas zoned for business, commercial or industrial use". The Dalton Regulation prohibits BCI from conducting commercial or industrial garbage pick up after 7:00 p.m. or before 7:00 a.m. since BCI is locked behind a residential neighborhood with no direct highway access.

The Regulation violates decisions of this Court regarding the Commerce Clause of Art. 1, §8 of the United States Constitution. State regulations of motor vehicles engaged in transportation for hire which unreasonably interfere with or discriminate against interstate commerce are invalid. When a state goes beyond the regulation of the

manner of use of highways, and purports to determine the persons by whom an interstate highway may be used, its regulation may be attacked successfully on the ground of an imposition of a burden on interstate commerce.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that his Petition for Writ of Certiorari be branted.

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